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Attorney for Plaintiff
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;) Civ. No. CV03 00385 SOM-LEK
) (Copyright)
Plaintiff,))
) **PLAINTIFF WAYNE BERRY'S**
vs.) **MEMORANDUM IN OPPOSITION**
) **TO DEFENDANT PCT'S MOTION**
HAWAIIAN EXPRESS SERVICE,) **IN LIMINE NO. 5 (TO EXCLUDE**
INC., a California corporation; et al.) **OR LIMIT THE TESTIMONY OF**
) **DR. PHILIP JOHNSON);**
) **CERTIFICATE OF SERVICE**
))
))
) HEARING:
) DATE: January 20, 2006
) TIME: 2:00 P.M.
) JUDGE: Honorable Susan Mollway
))
Defendants.) TRIAL DATE: January 24, 2006
))
))

**PLAINTIFF WAYNE BERRY'S MEMORANDUM IN
OPPOSITION TO DEFENDANT PCT'S MOTION IN
LIMINE NO. 5 (TO EXCLUDE OR
LIMIT THE TESTIMONY OF DR. PHILIP JOHNSON)**

COMES NOW Plaintiff Wayne Berry, by and through his undersigned counsel and hereby submits his memorandum in opposition to Defendant PCT's Motion in Limine No. 5 (To Exclude or Limit the Testimony of Dr. Philip Johnson (the "Motion").

DISCUSSION.

Professor Johnson is not named as a witness in Mr. Berry's case in chief because liability has already been determined. Mr. Berry reserves that right to call him as a rebuttal witness should the Court allow any testimony regarding Fleming's inadvertent or accidental violation of Mr. Berry's rights by the inclusion of a single field in one of the tables when the facts that are undisputed in this case are that there were 69 tables in Mr. Berry's original database and 88 in original Logistics Data.mdb that Dillon created on or about March 31, 2003. Fleming withheld this actual database from production until the Guidance materials were, in part, begrudgingly produced and all that the experts saw was the printed queries that Mr. Dillon claimed were run against Original Logistics Data.mdb leaving just shadows of the database but not its entire structure.

Therefore, should Fleming be permitted to put forward any evidence that was

derived from its sanctionable withholding of evidence and false testimony in this case, Mr. Berry has a right to be able to put on a rebuttal case to show the truth and have the jury rule accordingly based on that evidence.

Therefore, for the reasons stated, Mr. Berry asks that the Motion be denied.

DATED: Honolulu, Hawai‘i, January 10, 2006.

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Plaintiff WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;) Civ. No. CV03 00385 SOM-LEK
) (Copyright)
Plaintiff,)
) **CERTIFICATE OF SERVICE**
vs.)
)
HAWAIIAN EXPRESS SERVICE,)
INC., a California corporation; et al.)
)
Defendants.)
)
)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on the dates and by the methods of service noted below, a true and correct copy of Plaintiff Wayne Berry's Memorandum in Opposition to Defendant PCT's Motion in Limine No. 5 (To Exclude or Limit the Testimony of Dr. Philip Johnson) was served on the following at their last known addresses:

Served Electronically through CM/ECF on January 10, 2006:

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DATED: Honolulu, Hawai'i, January 10, 2006.

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Plaintiff WAYNE BERRY